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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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IN RE: :  
:

15-MD-2645 (WHP)

15-MC-2645 (WHP)

KIND LLC "ALL NATURAL"  
LITIGATION :  
:

**INITIAL CASE MANAGEMENT ORDER**

**(ORDER NO. 1)**

*This Document Relates to All Actions* :  
-----X

WILLIAM H. PAULEY III, District Judge:

The civil actions listed on Schedule A were transferred to this Court by an Order of the Judicial Panel on Multidistrict Litigation ("JPML") dated August 7, 2015 (ECF No. 1) (hereinafter, the "Transfer Order") and merit special attention as complex litigation.

Accordingly, it is hereby ORDERED that:

**I. APPLICABILITY OF THIS ORDER**

The provisions of this Order shall govern the practice and procedure in: (1) those actions transferred to this Court by the JPML Transfer Order; (2) all related actions against Kind LLC that were filed in the Southern District of New York and have previously been transferred to MDL-2645; and (3) any "tag-along" actions later filed in, removed to, or transferred to this Court. The Clerk will send a copy of this Order to counsel for any plaintiffs or newly-named defendants in any case newly-filed or transferred to this Court.

This Order vacates any case management order issued prior to the transfer of a case to MDL-2645. All pending motions or letter motions in the transferor courts are denied without prejudice, and will be adjudicated under procedures set forth in this Order and subsequent orders issued by this Court.

## II. CONSOLIDATION

The civil actions listed on Schedule A are consolidated for pretrial purposes. Any “tag-along” actions later removed to or transferred to this Court, or directly filed in the Southern District of New York, will automatically be consolidated with this action without the necessity of future motions or orders. This consolidation, however, does not constitute a determination that the actions should be consolidated for trial, nor does it have the effect of making any entity a party to any action in which it has not been named and served in accord with the Federal Rules of Civil Procedure.

## III. CAPTION

All documents served or filed in MDL-2645 shall bear the following caption:

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

IN RE:

KIND LLC “ALL NATURAL”  
LITIGATION

15-MD-2645 (WHP)

*This Document Relates To [“All Actions” or  
specify by title and case number the  
individual applicable cases if the document  
relates to less than all of the consolidated  
cases]*

## IV. FILING AND SERVICE OF DOCUMENTS

All counsel are required to register for and participate in this Court’s CM/ECF filing system. This system affords immediate access to all electronically filed documents and obviates the need for personal service. Unless otherwise ordered, all documents shall be filed

electronically via the Court's CM/ECF system and must be filed in accord with the Southern District of New York's Local Rules, ECF Rules and Instructions, and this Court's Individual Practices. For assistance with the ECF filing system, counsel should contact the Court's help desk at (212) 805-0800.

In accord with Rule 2.1(c) of the Rules of Procedure of the JMPL, all counsel appearing in any of the actions listed in Schedule A prior to the Transfer Order need not enter a notice of appearance, submit a pro hac vice application to practice before this Court, or obtain local counsel.

All counsel who did not appear in an action listed on Schedule A prior to the Transfer Order may enter a notice of appearance in 15-MD-2645 and submit a pro hac vice application without the need to obtain local counsel. Motions to appear pro hac vice must be filed on ECF; any such motion should be filed in the 15-MD-2645 docket and spread to all cases in which the attorney appears.

#### **V. MASTER CASE FILE**

In this Court's view, the creation of a Master Case File limited to filings of significance is advantageous. Accordingly, the Clerk of the Court is directed to open a Master Case File bearing docket number 15-MC-2645. Any filing fees associated with opening the Master Case File docket are waived. The caption shall read "In re: Kind LLC 'All Natural' Litigation MDL." For administrative purposes only, Plaintiffs shall be listed as "Kind Bar Plaintiffs" and Defendants shall be listed as "Kind Bar Defendants" in the Master Case File, 15-MC-2645. No appearances will be entered on the 15-MC-2645 docket until further order of this Court.

Entries on the Master Case File docket will be limited to this Court's case

management orders and other orders of significance, and substantive filings by the parties that relate to all actions as directed by this Court (e.g. master pleadings, motion papers). Parties shall file documents on the Master Case File docket (in addition to, not in lieu of, the MDL docket) as authorized by this Court. Papers filed without this Court's authorization will be stricken.

The Clerk of the Court is directed to docket the Transfer Order in 15-MC-2645 as ECF No. 1, to be followed by this Initial Case Management Order as ECF No. 2. This Initial Case Management Order shall also be docketed in 15-MD-2645, and all actions consolidated therewith.

## **VI. INITIAL PRE-TRIAL CONFERENCE**

The Court will conduct an Initial Pre-Trial Conference on **October 6, 2015, at 11:00 a.m.** in Courtroom 20B at the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, New York, New York.

Each party represented by counsel shall appear at the Initial Conference through an attorney, who will have primary responsibility for the party's interest in this litigation. Any party not represented by counsel in this MDL must appear in person unless otherwise ordered.

Counsel are expected to familiarize themselves with: (1) the *Manual for Complex Litigation, Fourth Edition*; (2) the Local Rules for the Southern District of New York, available at <http://www.nysd.uscourts.gov/index.php>; and (3) this Court's Individual Practices for Civil Cases, available at <http://www.nysd.uscourts.gov/judge/Pauley>. Counsel should be prepared to suggest procedures that will facilitate the expeditious, economical, and just resolution of this litigation.

Counsel shall confer in advance of the Initial Pre-Trial Conference to discuss: a proposed structure for Plaintiffs' counsel; a proposed schedule for motions for appointment of

lead counsel; the filing of a consolidated amended complaint; a discovery schedule; and other pre-trial activities. Counsel shall file a joint status report setting forth the parties' proposals, and identifying any issues that any party wishes to raise at the Initial Pre-Trial Conference no later than October 1, 2015.

To facilitate preparation for the Initial Pre-Trial Conference, this Court hereby designates Finkelstein, Blankinship, Frei-Pearson & Garber, LLP as temporary liaison counsel for Plaintiffs ("Temporary Liaison Counsel"). Counsel for any plaintiff appearing at the conference will have an opportunity to address this Court, but should raise potential issues with Temporary Liaison Counsel in advance, so that the Court can be alerted in the joint status report.

#### **VII. EXTENSION AND STAY**

Defendant is granted an extension of time to respond to any pleading pending further order of this Court. Similarly, the time to respond to any discovery requests is extended until further order of this Court.

All parties and counsel are reminded of their duty to preserve evidence that may be relevant to this action. The duty extends to documents, data, and tangible things, which is to be interpreted broadly to include any physical or electronic material (including metadata) that is or may reasonably be discoverable, or that may assist in identifying discoverable material.

Dated: August 24, 2015  
New York, New York

SO ORDERED:

  
WILLIAM H. PAULEY III  
U.S.D.J.

## **SCHEDULE A**

### Central District of California

- Kaufer v. Kind, LLC, C.A. No. 2:15-02878
- Galvez, et al. v. Kind LLC, C.A. No. 2:15-03082
- Jackson v. Kind, LLC et al., C.A. No. 2:15-03683
- McDonald, et al. v. Kind, LLC, C.A. No. 8:15-00615

### Northern District of California

- Cooper v. Kind LLC, C.A. No. 4:15-01872
- House, et al. v. Kind LLC, C.A. No. 4:15-02127

### Southern District of California

- Bustamante v. Kind LLC, et al., C.A. No. 3:15-00891

### Northern District of Illinois

- Karnezis v. Kind, LLC, C.A. No. 1:15-03679

### Eastern District of New York

- Short, et al. v. Kind LLC, C.A. No. 1:15-02214

### Southern District of New York

- O'Brien v. Kind, LLC, C.A. No. 1:15-03699
- Cavanaugh v. Kind, LLC, C.A. No. 1:15-04064